

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>CHARLES D. DEAN</b>	)	
Claimant	)	
VS.	)	
	)	
<b>BOEING COMPANY</b>	)	Docket No. 1,022,245
Respondent	)	
AND	)	
	)	
<b>INDEMNITY INSURANCE COMPANY OF NORTH AMERICA</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent appeals the August 25, 2005 preliminary hearing Order of Administrative Law Judge Thomas Klein. Claimant was awarded temporary total disability compensation beginning June 21, 2005, and continuing until claimant is released to substantial and gainful employment.

**ISSUES**

1. Can claimant receive temporary total disability benefits concurrent while receiving wage continuation benefits from the employer?
2. Does the Appeals Board (Board) have jurisdiction over this matter on appeal from a preliminary hearing?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Claimant was laid off from his employment with respondent on June 16, 2005. On June 17, 2005, income continuation payments, pursuant to claimant's IAM contract with respondent, began and were scheduled to run for a period of 17 weeks. Respondent contends that claimant is not entitled to both income continuation payments and temporary total disability compensation.

Not every alleged error in law or fact is reviewable from a preliminary hearing order. The Board's jurisdiction to review preliminary hearing orders is generally limited to the following issues, which are deemed jurisdictional:

1. Did the worker sustain an accidental injury?
2. Did the injury arise out of and in the course of employment?
3. Did the worker provide timely notice and written claim of the accidental injury?
4. Is there any defense which goes to the compensability of the claim?<sup>1</sup>

Additionally, the Board may review those preliminary hearing orders where it is alleged the administrative law judge exceeded his or her jurisdiction or authority in granting or denying benefits.<sup>2</sup>

Claimant's entitlement to temporary total disability compensation is not one of the issues listed above over which the Board takes jurisdiction on appeal from a preliminary hearing. Moreover, the ALJ did not exceed his jurisdiction by determining that claimant was entitled to temporary total disability compensation, whether that was a correct finding or not.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.<sup>3</sup>

The Board concludes that when temporary total disability compensation is at issue, that determination is within the jurisdiction of the administrative law judge to decide at the time of preliminary hearing. That finding is not appealable from a preliminary hearing order. Therefore, this appeal should be dismissed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the August 25, 2005 preliminary hearing Order of Administrative Law Judge Thomas Klein

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<sup>1</sup> K.S.A. 44-534a.

<sup>2</sup> K.S.A. 2004 Supp. 44-551.

<sup>3</sup> *Provance v. Shawnee Mission U.S.D. No. 512*, 235 Kan. 927, 683 P.2d 902 (1984); *Allen v. Craig*, 1 Kan. App. 2d 301, 564 P.2d 552, rev. denied 221 Kan. 757 (1977); *Taber v. Taber*, 213 Kan. 453, 516 P.2d 987 (1973).

remains in full force and effect and the appeal of the respondent in this matter should be, and is hereby, dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November, 2005.

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BOARD MEMBER

c: Roger A. Riedmiller, Attorney for Claimant  
Kirby A. Vernon, Attorney for Respondent and its Insurance Carrier  
Thomas Klein, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director